

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNO CO LLC; PATH AMERICA FARMER'S
MARKET, LP; PATH AMERICA KING CO
LLC; PATH AMERICA TOWER, LP; PATH
TOWER SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA
VILLAGE KIRKLAND, LLC; DARGEY
DEVELOPMENT, LLC; DARGEY
ENTERPRISES, LLC; and PATH OTHELLO,
LLC,,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

NOTICE OF MOTION AND MOTION FOR
APPROVAL OF RECEIVER'S
RECOMMENDED DISTRIBUTION PLAN
AND AUTHORIZATION TO PROCEED
WITH CLOSING TASKS

NOTED ON MOTION CALENDAR:
NOVEMBER 16, 2018

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TO ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Michael A. Grassmueck (the "Receiver"), the court-appointed Receiver for Path America LLC; Path America SnoCo LLC; Path America Farmer's Market, LP; Path America KingCo, LLC; Path America Tower, LP; Path Tower Seattle, LP; Potala Tower Seattle, LLC; Potala Shoreline, LLC; Potala Village Kirkland, LLC; Dargey Development, LLC; Dargey Enterprises, LLC; Path Farmer's Market, LLC; and Dargey Holdings, LLC (collectively, "Receivership Entities"), hereby files this Motion For Approval of Receiver's Distribution Plan ("Motion"), which Distribution Plan is attached hereto as Exhibit A and incorporated herein by this reference. Following the Court granting of this Motion and approval of the Distribution Plan, the Receiver will conclude the final dispositions of assets, and address the remaining tax and administrative issues. At such time as the Receiver has completed these tasks, the Receiver will file his closing motions including one seeking authority to distribute the receivership proceeds to investors and creditors in accordance with the Distribution Plan.

The Motion and Distribution Plan is posted on the Receiver's website: (<http://www.grassmueckgroup.com/pathamerica.php>). A hard copy of the Motion can also be obtained by emailing a request to the Receiver through the website or by sending a written request to the Receiver at Grassmueck Group, PO Box 230091, Portland, Oregon 97281.

This Motion is made on the grounds that the Receiver has completed processing of and obtained the Court's approval of the allowed claims against the Receivership Entities submitted in accordance with summary claims procedures also approved by this Court. The Receiver has completed his accounting as to the Receivership Entities, the Receiver has liquidated or is in the process of liquidating the remaining assets of the receivership estate, a judgment against the individual defendant was entered and the receivership entity consent judgments are in process.¹ Accordingly, the Receiver requests that the Court approve the Receiver's Distribution Plan and authorize the Receiver to make distributions.

¹ In the Joint Status Report submitted to the Court on September 12, 2018 [Dkt. No. 645], counsel for the Securities and Exchange Commission estimated that the internal consent judgment approval process would be completed in approximately eight weeks.

This Motion is based on this Notice of Motion and Motion, the attached Memorandum of Points and Authorities, the supporting Receiver Declaration, the documents and pleadings already on file in this action, and upon such further oral and documentary evidence as may be presented at the time of the hearing.

If you oppose this Motion, you are required to file a written opposition with the Office of the Clerk, United States District Court, 700 Stewart Street, Suite 2310, Seattle, Washington 98101, and serve the same on the undersigned no later than four (4) calendar days prior to the hearing on this Motion. If you fail to serve a written opposition by the above deadline, the Court may grant the Receiver's requested relief without further notice.

Dated: October 31, 2018

ALLEN MATKINS LECK GAMBLE MALLORY
& NATSIS LLP

By: /s/ David R. Zaro

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Having completed disposition of the assets of the Receivership Entities (save the Shoreline Property), the claims allowance process, and the Court having determined that certain of the Defendants violated federal securities laws, the Receiver requests approval of his proposed Distribution Plan, which is attached hereto as **Exhibit A**. The Distribution Plan provides for priority payment of all allowed administrative expenses, with all other allowed claims being paid *pro rata* from the remaining assets.

Upon the Court's approval of the Distribution Plan, the Receiver will complete the remaining work of the receivership including the filing of tax returns, closing the sale of real property and prepare the final accounting in anticipation of closing the receivership. Thereafter, the Receiver will file a motion seeking authority to, among other things, make a distribution to investors and creditors and to close the receivership (the "Closing Motion".)

In preparing the Plan, the Receiver considered the fact that Defendant Lobsang Dargey ("Dargey") and the Receivership Entities made extensive transfers of cash and purported loans between and among themselves to create liquidity necessary to pay expenses, to pursue new projects and to fund the individual defendant's lifestyle. Such transfers were part of the fraudulent scheme which resulted in the filing of the underlying civil action and related criminal action against Dargey. In light of the commingling of assets, the Receiver concluded early on that unwinding of these transactions was not possible. While most EB-5 Investor claimants remained with the projects in which they originally invested, it is recognized that it would be entirely unfair to the remaining investors and creditors to make distributions on an entity by entity basis.

Accordingly, the proposed Distribution Plan provides all receivership assets be pooled and allowed claimants receive a *pro rata* distribution from the pool in accordance with the Distribution Plan terms, rather than allowing investors and creditors that benefitted from intercompany transfers to receive a greater share of receivership assets at the expense of other investors and

creditors. In other words, the Distribution Plan attempts to equalize creditor recoveries regardless of the timing of the investments or the debt, or the specific project invested in or worked upon.

II. FACTUAL BACKGROUND.

A. Receiver's Appointment and Dargey's Plea and Consent Judgments.

The Receiver was appointed the federal equity receiver in the enforcement action brought by the U.S. Securities and Exchange Commission (the "Commission"), known as *Securities and Exchange Commission v. Path America, LLC, et al.*, in the United States District Court, Western District of Washington, Case No. 2:15-cv-01350-JLR ("SEC Action"), pursuant to Order Appointing Receiver entered on October 22, 2015, as subsequently expanded by an order entered on July 15, 2016 (together, the Appointment Orders.) [Dkt. No. 88 and 375.] (Declaration of Michael A. Grassmueck ("Grassmueck Decl."), ¶ 1-3).

Mr. Grassmueck was appointed as Receiver for Path America, LLC, Path America SnoCo, LLC, Path America Farmer's Market, LP, Path America KingCo, LLC, Path America Tower, LP, Path Tower Seattle, LP, Potala Tower Seattle, LLC, Potala Shoreline, LLC, Potala Village Kirkland, LLC, Dargey Development, LLC, Dargey Enterprises, LLC, Path Farmer's Market, LLC, and Dargey Holdings, LLC (collectively, the "Receivership Entities"). (*Id.*)

Dargey owned and operated Path America SnoCo LLC and Path America KingCo LLC, two EB-5 regional centers approved by the United States Immigration and Citizenship Services. (*See*, Dargey Plea Agreement in WAWD Case No. CR17-001TSZ ("Plea Agreement") at ¶ 7(b), attached to the Declaration of David R. Zaro ("Zaro Decl."), Ex. A.) Using these regional centers, Dargey promoted two so-called EB-5 projects to immigrant investors; Path America Farmer's Market and Potala Tower. (Plea Agreement at ¶ 7(c), at Zaro Decl. Ex. A.) In the investment offerings, Dargey made material misrepresentations and omissions concerning the EB-5 Projects. (Plea Agreement at ¶ 7(d)-(i), Zaro Decl. Ex. A.) Among other things, contrary to representations in the offerings, immigrant investor capital contributions were fraudulently diverted to non-EB-5 projects and for personal expenses of Dargey. (*Id.* at ¶ 7(h)). In addition, funds raised for one

1 project were commingled with funds raised for other projects. As part of the scheme, Dargey
2 attempted to disguise the commingling of assets through purported inter-company loans.

3 Ultimately, Dargey plead guilty to criminal conduct related to certain matters alleged in the
4 complaint in the SEC Action, including wire fraud, and the diversion and commingling of investor
5 funds. See, Consent to Final Judgment as to Defendant Lobsang Dargey and Relief Defendant
6 Path Othello, ¶ 2, [Docket. No. 506] and Plea Agreement.

7 **B. Liquidation and Recovery of Receivership Assets on Behalf of Investors.**

8 As previously reported, the primary assets of the Receivership Entities ("Receivership
9 Assets") consisted of: the Potala Tower project in Seattle, Washington ("Tower Project"); the
10 Potala Market Place Project in Everett, Washington ("Market Place Project"); the Potala Shoreline
11 Project in Seattle, Washington ("Shoreline Project"), and the Potala Village Kirkland Project in
12 Kirkland, Washington ("Kirkland Project").² Grassmuck Decl. ¶ 4. The transaction by which the
13 Receiver disposed of the Tower Project closed during the third quarter of 2016. The transaction
14 by which the Receiver disposed of the Market Place Project closed during the second quarter of
15 2017. The sale of Kirkland Project closed during the third quarter of 2017. With respect to the
16 Shoreline Project, the Receiver negotiated and documented an amendment to the purchase and sale
17 agreement and expects the sale will close in the fourth quarter of 2018.

18 These foregoing transactions, along with successful conclusion of several lawsuits have
19 generated cash recoveries for the Receivership Estate in excess of \$15 million. Id. ¶ 5. Moreover,
20 157 Tower Project EB-5 investors, with \$78 million invested, and 80 Market Place Project
21 investors, with \$40 million invested, all opted-in with regard to restructuring of these two projects.
22 Id. In addition to furthering their goals of citizenship, these investors have improved their
23 economic positions over those provided in their original agreements and it is reasonably likely that
24 they will ultimately be made whole. Id.

25 Based upon the sale and disposition of the foregoing Projects, along with recoveries from
26 other asset sales and litigation, the Receiver anticipates that he will have approximately

27
28 ² The Tower Project, the Market Place Project, the Shoreline Project, and the Kirkland Project are
sometimes collectively referred to as the "Projects."

1 \$3.6 million to distribute after payment of Administrative Expenses, taxes, and the planned
 2 Reserve. This estimate may be reduced depending upon the resolution of certain tax issues, the
 3 closing of the Shoreline Project sale, and administrative expense claims.

4 **C. Claims Review and Allowance.**

5 On June 16, 2016, the Receiver filed a motion for Court approval of a proposed claims
 6 process [Docket 352]. After discussions with counsel, the Receiver withdrew his motion and filed
 7 a new motion on July 28, 2016 [Docket 385]. The motion was granted by order of the Court dated
 8 August 30, 2016 ("Claims Order") [Docket 415]. Pursuant to the Claims Order, the Receiver set
 9 and published a claims bar date of November 30, 2016 and published/distributed claim forms and
 10 instructions. The Receiver's office received approximately forty (40) claims as of the claims bar
 11 date, asserting various amounts owed by, and interests held in, Receivership Entities. The
 12 monetary claims had a face value of approximately \$40 million. The Receiver reviewed each
 13 claim and its supporting documentation, made preliminary determinations as to validity and value,
 14 and attempted to resolve disputed claims with the applicable claimants. The Receiver filed motion
 15 papers with the Court on November 9, 2017 seeking approval of proposed allowed claim amounts
 16 and treatment recommendations with respect to various claimants ("Omnibus Motion") [Dkt. 588],
 17 and separately as to Zhou Yan ("Zhou Motion") [Dkt. 590]. The Court granted the Omnibus
 18 Motion on December 1, 2017 [Dkt. 602], approving allowed claim amounts as set forth therein.
 19 The Zhou Motion was resolved through a settlement which was the subject of a motion filed
 20 herein [Dkt. 607].

21 **D. Administrative Expenses and Reserves.**

22 As is customary and consistent with the Appointment Orders, the Distribution Plan calls
 23 for payment of administrative expenses of the Receiver his professionals; in this case, Allen
 24 Matkins, Karr Tuttle, Financial Forensics, and Peterson Sullivan LLP (collectively, the
 25 "Professionals.") These Professionals provided legal, accounting and tax services required by the
 26 Receiver and Receivership Entities.

Over the course of this case, the Receiver and Professionals submitted interim fee applications to the Court for work performed over a set period of time. In each case, the Professionals requested approval of 100% of their fees but payment of only 80%. This 20% was held back pending the conclusion of the receivership case.

To date, the Receiver and Professionals have recovered over \$15 million in cash and successfully concluded transactions involving the Tower and Marketplace Projects where it is possible that \$118,500,000 will be returned to investors. Grassmuck Decl. ¶ 5. Given the overall success of the receivership, the Receiver and Professionals will file a motion requesting payment of their final fee applications and payment of the 20% hold back at such time as the closing motions are filed. Id.

The Distribution Plan calls for setting aside funds as a reserve for concluding the receivership (the "Reserve.") The amount of the Reserve will be proposed in the Closing Motion once the amounts available for distribution are finalized and will cover the expenses of closing the case such as document destruction, distribution processing, the Receiver's and Professionals fees. While the Receiver and Professionals believe that they have correctly analyzed and prepared tax returns, the IRS and State taxing agencies maintain certain audit rights. If not resolved prior to the Closing Motion, then the Receiver may need to set aside funds to address a tax audit. The Receiver may ask the Court to approve the specific amount of the Reserve as part of the Closing Motion. After a reasonable period of time, as set forth in the Distribution Plan, the Receiver will turn over any remaining reserves, along with uncashed distributions to the Commission.

III. DISTRIBUTION PLAN.

The Distribution Plan, attached hereto as **Exhibit A**, lays out the Receiver's proposed distribution of receivership assets to holders of allowed claims. The Distribution Plan provides for the establishment of a Reserve, in an amount approved by the Court, to cover allowed administrative expenses through completion of the receivership. As noted above, the Distribution Plan generally provides for (a) pooling of receivership estate assets, (b) payment of priority or administrative claims, and (c) *pro rata* distributions from the pool to all holders of allowed claims

(investors and non-investors). The Distribution Plan pro rata payments will be based upon the allowed claims set forth in Claims Order [Docket No. 601-602] as well as the below described Tower Master Agreement. Under the Distribution Plan, the Court retains exclusive jurisdiction to resolve all matters relating to the Distribution Plan and receivership case in the event such issues arise after the Distribution Plan is approved and the case is closed.

IV. ARGUMENT.

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and

efficient administration of the receivership for the benefit of creditors."). Accordingly, the Court has broad discretion in approving a plan of distribution and authorizing distributions.

A. The Distribution Plan Should Be Approved

The Distribution Plan is designed to provide an orderly and fair distribution of receivership estate assets. Priority is given to fees and costs of the receivership approved by the Court and other administrative claims, as is customary in federal equity receiverships. All other claimants will receive a *pro rata* distribution of cash in the receivership estate in accordance with the Distribution Plan terms, except for those payments which are the subject of prior district court orders. Where the assets of a receivership estate are insufficient to pay all claims, *pro rata* is the most fair and equitable method of distributing receivership estate assets to similarly situated claimants. *See Capital Consultants*, 397 F.3d at 750; *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 88-89 (2d Cir. 2002) (endorsing *pro rata* distribution of receivership assets).

B. The Receivership Entities' Assets Should Be Pooled For Distribution

Where, as here, there is extensive movement of cash and assets between and among entities involved in securities violations, equity demands that assets of all Receivership Entities be pooled for purposes of distribution so as not to favor creditors or investors in one Receivership Entity that happened to benefit from inter-company transfers at the expense of investors in other Receivership Entities. *See United States v. Real Property Located at 13328 and 13324 State Highway 75 North*, 89 F.3d 551 (9th Cir. 1996); *In re North American Coin & Currency LTD.*, 767 F.2d 1573 (9th Cir. 1985); *SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80 (2d Cir. 2002); *SEC v. Forex Asset Mgmt., LLC*, 242 F.3d 325 (5th Cir. 2001).

A claimant's chances of being paid at the time the Receiver was appointed was almost entirely fortuitous. Had the scheme been stopped a month earlier or a month later, the assets in each entity or fund might have been very different. In other words, the value of each of the assets and one's investment were in a state of flux such that some projects were on the verge of completion while others were heading toward potential insolvency. Accordingly, given the established commingling of funds, the happenstance of where assets lied at the commencement of

1 the receivership should not result in one group of investors or creditors being favored over
2 another.

3 Moreover, it would not be possible at this stage to unwind these numerous inter-fund
4 transactions. Even if it were possible, such unwinding would not produce a more equitable result
5 than creating a single pool of assets and distributing the pool on a pro rata basis as provided in the
6 Distribution Plan.

7 **C. Payments Will Be Based Upon Previously Allowed Claims**

8 Except for the Binjiang claim, which was addressed in the below described Tower Master
9 Agreement, each investor and non-investor is deemed to have an allowed claim consistent with the
10 Claims Order. As such, each claimant shall receive their pro rata distribution based upon the
11 allowed claim. With regard to Binjiang, its claims were addressed in connection with the
12 restructuring transaction involving the Tower Project Entities, which transaction was
13 memorialized in that certain Master Agreement (as amended, the "Tower Master Agreement"),
14 subsequently approved by the Court. [Dkt. No. 357-2] The Potala Shoreline, LLC Membership
15 Investment Rescission Agreement ("Shoreline Rescission Agreement"), an exhibit to the Tower
16 Master Agreement, provided that Binjiang Shoreline Corp. ("Binjiang Shoreline") would have an
17 allowed claim in the amount of \$10,228,154.06, which was to be paid as follows:

18 As set forth in the [Tower] Master Agreement, Binjiang Shoreline
19 will have an allowed claim in the amount of \$10,228,154.06 against
20 [Potala Shoreline, LLC], to be paid from the proceeds of the sale of
21 the Shoreline property. Within five (5) days of the issuance of the
22 Claims Order (as defined in the [Tower] Master Agreement) from
23 the Court, assuming the Shoreline property has been sold, the net
24 proceeds of such sale shall be paid to Binjiang Shoreline on its
25 allowed claim, pro rata with any other unsecured allowed claims
26 relating to the Shoreline property. If the Shoreline property has not
27 been sold before the issuance of the Claims Order, the payment shall
28 be made within five (5) days after the sale of the Shoreline property.
Payment of the full amount of \$10,228,154.06 from the proceeds
will satisfy the allowed claim. Any amount less than
\$10,228,154.06 paid from the Shoreline sale proceeds to Binjiang
Shoreline will remain as an allowed claim against [Potala Shoreline,
LLC].

1 As of the date of this Motion, the Shoreline Property has not yet been sold. The closing is
 2 currently scheduled to occur by December 31, 2018. If the contemplated sale closes, the Receiver
 3 anticipates the net proceeds will be sufficient to pay Binjiang Shoreline's entire allowed claim, as
 4 the "other unsecured allowed claims relating to the Shoreline property" are de minimis.

5 In the event buyer fails to close the pending sale transaction, Binjiang Shoreline's allowed
 6 claim will remain unpaid. At that point, the Receiver can either re-market the property for sale,
 7 which may delay the closing of the receivership, or propose an alternative disposition. Given the
 8 fact that almost all of the value of the property is effectively pledged to Binjiang Shoreline, one
 9 alternative disposition the Receiver considers viable is to transfer title to the property to Binjiang
 10 Shoreline in full satisfaction of its claim.

11 **D. The Receiver Should Be Authorized To Make Distributions**

12 The Distribution Plan contemplates a distribution be made as soon as practicable and
 13 provides for the creation of a cash reserve. As of October 31, 2018 there was a total of
 14 approximately \$4,200,000 on hand in the estate. The Receiver anticipates recovering an additional
 15 \$1,175,000 from the Potala Village Settlement and the sale of the Shoreline Property. Following
 16 receipt of these last proceeds, the Receiver will seek authority to distribute approximately
 17 \$3,600,000, with the remaining cash going into a cash reserve for use to pay taxes and
 18 administrative expenses. The cash reserve, as with all cash in the receivership estate, will be
 19 maintained in federally-insured bank accounts and U.S. treasury securities.

20 The Receiver will review actual and projected administrative expenses and evaluate the
 21 amount necessary to cover those expenses through conclusion of the receivership. If, at the
 22 conclusion of the case, the cash reserve exceeds administrative expenses, the Receiver shall
 23 turnover the remaining funds in Reserve to the Commission.

24 ///

25 ///

26 ///

27 ///

28

1 **V. CONCLUSION**

2 Based on the foregoing, the Receiver requests an order approving the Distribution Plan
3 attached as **Exhibit A** and authorizing the Receiver to proceed with the closing tasks as described
4 herein.

5
6 Dated: October 31, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

7
8 By: /s/ David R. Zaro

David R. Zaro, Esq. #124334 (CA)

(Pro Hac Vice Granted Oct 26, 2015)

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CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2018, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

Dated: October 31, 2018

s/ David R. Zaro

David R. Zaro, Esq. #124334 (CA)

(Pro Hac Vice Granted October 26, 2015)

EXHIBIT A

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

PATH AMERICA, LLC; PATH AMERICA
SNOCO LLC; PATH AMERICA FARMER'S
MARKET, LP; PATH AMERICA KINGCO
LLC; PATH AMERICA TOWER, LP; PATH
TOWER SEATTLE, LP; POTALA TOWER
SEATTLE, LLC; and LOBSANG DARGEY,

Defendants, and,

POTALA SHORELINE, LLC; POTALA
VILLAGE KIRKLAND, LLC; DARGEY
DEVELOPMENT, LLC; DARGEY
ENTERPRISES, LLC; and PATH OTHELLO,
LLC,,

Relief Defendants.

Case No. 2:15-cv-01350-JLR

RECEIVER'S [PROPOSED] DISTRIBUTION
PLAN FOR PATH AMERICA, LLC
RECEIVERSHIP ENTITIES

Exhibit A - Page 17

1 **I. DEFINITIONS**

2 Unless the context otherwise requires, the following terms have the following meanings
3 when used in their capitalized forms herein. Such meanings are equally applicable to both the
4 singular and plural forms of the terms.

5 **Administrative Claim.** Claims arising from post-Receivership Date services and
6 activities such as services rendered by the Receiver and for the Receiver by attorneys and
7 accountants, goods and services provided by vendors; as well as certain state and federal taxes not
8 addressed by the below described Claim Order.

9 **Allowed Claim.** Any Claim allowed by the Court pursuant to that Order Approving
10 Receiver's Recommended Treatment of Claims ("Claim Order") entered in the Receivership Case
11 on December 1, 2017 [Docket 601-602]. The amount of each Allowed Claim is set forth on
12 Exhibits A and B of the Claim Order.

13 **Claims Bar Date.** November 30, 2016.

14 **Cash.** All cash and cash equivalents of the Receivership Entities held by the Receiver.

15 **Claim.** Any right to payment from the Receivership Entities whether or not such right is
16 reduced to judgment, liquidated, unliquidated, contingent, matured, unmatured, disputed,
17 undisputed, legal, equitable, secured, or unsecured.

18 **Claimant.** Holder of an Allowed Claim.

19 **Court.** United States District Court for the Western District of Washington, Seattle
20 Division.

21 **EB-5 Investor Claimant.** Holder of a claim that arises from one or more investments
22 with the Receivership Entities by an individual investor in the Marketplace Project or the Tower
23 Project who sought a green card through the EB-5 program.

24 **Estate or Receivership Estate.** All assets, including Cash, loans, licenses, claims, causes
25 of action, or rights of recovery held by the Receiver on behalf of the Receivership Entities.

26 **Pro Rata Share.** A proportionate share such that the ratio of the consideration distributed
27 on account of an Allowed Claim to the amount of such Allowed Claim is the same as the ratio of

28 **Exhibit A - Page 18**

the consideration distributed on account of all Allowed Claims to the amount of all Allowed Claims. In other words, in calculating each Pro Rata Share, the total Allowed Claims will be added together to arrive at a denominator, and each individual Allowed Claim will be used as a numerator, to arrive at the percentage of the Pro Rata distribution amount of each Allowed Claim.

Receiver. Michael Grassmueck

Receivership Case. That certain litigation, pending in the Court, known as *Securities and Exchange Commission v. Path America, LLC, et. al.*, Case No. 2:15-cv-01350-JLR, the Honorable James L. Robart, presiding.

Receivership Date. October 22, 2015.

Reserve Cash. Cash in an amount approved by the Court to satisfy Administrative Claims including but not limited to Receiver's and professional's fees, Qualified Settlement Fund and other taxes that may be due or owing. The Receiver will apply to the Court to establish the amount of the Reserve at such time as the Receiver files the motion seeking authority to, among other things, make a distribution to investors and creditors and to close the receivership (the "Closing Motion".)

II. TREATMENT OF CLAIMS

A. Administrative Claims

Administrative Claims will be paid in full from Cash after proper application and approval by the Court. Notwithstanding the foregoing, Administrative Claims, not including fees and costs of the Receiver and his professionals, that represent tax liabilities or liabilities incurred in the ordinary course of administration of the Receivership Estate shall be paid by the Receiver in the ordinary course, without approval of the Court. The Receiver may apply to the Court for approval of the payment of taxes in his reasonable discretion. Cash coming into the Receivership Estate after approval of this Distribution Plan shall be added to Reserve Cash. Administrative Claims arising on and after approval of the Distribution Plan, after proper application and approval by the Court, shall be paid directly from Reserve Cash.

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B. Allowed Claims

1. EB-5 Investor Claims.

The EB-5 Investors were not asked to submit claims because the Receiver had previously verified the amount of each claim of the EB-5 Investor Claimants. As such, EB-5 investors were not required to submit claims. Except for certain opt-out EB-5 Investors addressed in the Claims Order, EB-5 Investor Claimants' interests and claims were already addressed through the orders entered in connection with the restructuring of Path America SnoCo, LLC and Path America Farmer's Market LP (collectively, "Farmer's Market Entities"), involving the project known as Everett Farmers Market ("PAFM Project") [Docket 546]; and Path America Tower, LP, Path America KingCo LLC, and Path Tower Seattle, LP (collectively "Tower Project Entities") involving the proposed hotel and condominium project in downtown Seattle ("Tower Project") [Docket 377.] As such, aside from those EB-5 Investor Claims set forth as allowed claims in Exhibit B of the Claim Order, no distributions will be made to EB-5 Investor Claimants.

2. Non-EB-5 Claims.

Distributions shall be made to non-EB-5 Claimants consistent with their Allowed Claims as set forth on Exhibit A to the Claim Order.

Claimants, both allowed EB-5 and non-EB-5 Claimants, shall receive Cash in an amount equal to such Claimant's Pro Rata Share of total funds to be distributed to all Allowed Claimants.

III. DISTRIBUTIONS

A. Distribution Payments

The total distribution shall be in a set amount approved by the Court following entry of an order approving this Distribution Plan and at such time as Receiver files the Closing Motion. Distributions shall be made following entry of a separate order authorizing the Receiver to make distributions pursuant to Receiver's Motion to Approve Final Distributions ("Distribution Motion") (collectively, "Approval Order"). The Receiver anticipates filing the Distribution Motion seeking approval to make the final distribution by the end of the first quarter of 2019. Claimants shall receive a Pro Rata Share distribution from Cash other than Reserve Cash as soon

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1 as practicable after the Court has entered the Approval Order. All distributions shall be made in
 2 Cash in the form of either a check or wire transfer in U.S. dollars. Claimants shall be responsible
 3 for any and all wire charges. Unless the Claimant requests otherwise, Distributions shall be
 4 directed to the name and address stated on the proof of claim form submitted to the Receiver.

5 At or near the filing of the Distribution Motion, the Receiver shall seek final approval of
 6 all fees and costs incurred by himself and his professionals, approval of a specified amount of
 7 Reserve Cash necessary to close the Receivership Case, approval of the Receiver's Closing
 8 Motion..

9 **B. Uncashed Distributions**

10 The Receiver shall conduct a reasonable investigation into distribution payments that
 11 remain uncashed 60 days after they were issued for the purpose of identifying correct addresses
 12 for the applicable Claimants. If a correct address can be identified, the payment shall be reissued.
 13 If a correct address cannot be identified, the Claimant's Claim will be automatically and
 14 permanently extinguished. Any funds remaining in receivership accounts 90 days after all
 15 distribution checks have been issued shall be transferred to the United States Treasury care of the
 16 Commission.

17 **IV. RETENTION OF JURISDICTION**

18 The Court shall have and retain exclusive jurisdiction over matters arising out of, or related
 19 to the receivership and the Distribution Plan including but not limited to, the following:

- 20 1. To consider any modifications to the Distribution Plan, to cure any defect or
 21 omission, or reconcile any inconsistency in the Distribution Plan to address tax issues or any order
 22 of the Court;
- 23 2. To hear and determine any objection or other dispute with respect to Claims or
 24 distribution amounts;
- 25 3. To protect the property of the Receivership Estate and the Receiver from adverse
 26 claims or interference with the Distribution Plan;

27
 28 **Exhibit A - Page 21**

4. To issue such orders in aid of execution of the Distribution Plan as may be necessary and appropriate;

5. To hear and determine all applications for compensation and reimbursement of expenses of the Receiver and his professionals;

6. To recover all assets of the Receivership Estate, wherever located;

7. To hear and determine all litigation, causes of action and all controversies, suits, and disputes that may arise in connection with the interpretation, implementation, or enforcement of the Distribution Plan; and

8. To consider Receiver's closing motions and enter a final decree closing the Receivership Case and discharging the Receiver.

V. MISCELLANEOUS PROVISIONS

The Distribution Plan supersedes all prior discussions, understandings, agreements, and documents pertaining or relating to any subject matter of the Distribution Plan. The headings used herein are inserted for convenience only and neither constitute a portion of the Distribution Plan nor in any manner shall they affect the provisions or interpretation(s) of the Distribution Plan. All notices, requests, and demands to or upon the Receiver to be effective shall be in writing (including, without limitation, by email or facsimile transmission) addressed as follows:

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1 Michael A. Grassmueck
2 PO Box 230091
3 Portland, OR 97281

4 with a copy to:

5 David R. Zaro, Esq.
6 Allen Matkins Leck Gamble Mallory & Natsis LLP
7 865 S. Figueroa Street, Suite 2800
8 Los Angeles, CA 90017-2543

9 Dated: November 1, 2018

ALLEN MATKINS LECK GAMBLE MALLORY
& NATSIS LLP

By: /s/ David R. Zaro

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